

MEMORANDUM

TO: Members, Clark Fork Basin Water Management Task Force (Task Force)
FROM: Gerald Mueller
SUBJECT: Summary of the May 7, 2008 Task Force Meeting
DATE: May 5, 2008

Participants

The following people participated in the Task Force meeting:

Task Force Members:

Harvey Hackett	Bitterroot
Fred Lurie	Blackfoot Challenge
Nate Hall	Avista
Caryn Miske	Flathead Basin Commission
Jim Dinsmore	Upper Clark Fork
Holly Franz	PPL Montana
Marc Spratt	Flathead Conservation District/Flathead Chamber of Commerce
Matt Clifford	Clark Fork Coalition
Gail Patton	Sanders County Commission

Ex Officio Members

Senator Verdell Jackson	Senate District 5
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Public

Brianna Randall	Clark Fork Coalition
Sylvia Reinicke	

Staff:

Curt Martin	DNRC
Gerald Mueller	Consensus Associates

Meeting Agenda

- April 10, 2008 Meeting Summary
- Updates
 - Membership
 - State of Flathead Lake
 - Hungry Horse water activities
 - Water Policy Interim Committee bill drafts
 - Watershed roundtable
 - Milltown cultural perspective budget request
- Water Right System Policy Paper
- Technical and Policy Conferences
- Public Comment
- Next Meeting

April 10, 2008, 2008 Meeting Summary

The Task Force made no change to the April 10, 2008 meeting summary.

Updates

Membership - Matt Clifford announced that this will be his last Task Force meeting as he is moving to another state. He introduced Brianna Randall who is the Water Policy & Grants Director for the Clark Fork Coalition. Assuming DNRC Director Mary Sexton agrees, Brianna will take Matt's place on the Task Force.

Gerald Mueller reported that he recently wrote to Mary Sexton with the Task Force's request that its membership be expanded to include representatives of well drillers and the building/real estate communities.

State of Flathead Lake - Caryn Miske reported on this topic. At the most recent meeting of the Flathead Basin Commission, Dr. Jack Stanford, Director of the Flathead Lake Biological Station, summarized the status of Flathead Lake. The establishment of Mysis shrimp in the lake resulting from their upstream introduction in 1960s has complicated water quality monitoring and management of the lake. Dissolved oxygen levels measured at deep locations continue to decline, which is an indication of degradation of the lake's water quality. At the same time, lake nutrient levels appear to have stabilized and water clarity as measured by Secchi depths has increased. The latter effects are probably due to Mysis shrimp feeding on nutrients. The outlook for the native fishery, cutthroat and bull trout, is bleak. Native species are being replaced by rainbow and lake trout.

Question - The Mysis appeared in the lake about 20 years ago?

Answer - Yes. Mysis were introduced in the basin to provide a food source for kokanee salmon. The Mysis population in the lake increased while the kokanee population crashed. Now, there are not enough predators present to limit the Mysis population. The lesson is not to introduce species into the lake.

Question - Are there sewage treatment systems around the lake?

Answer - Some systems exist. Lakeside and Big Fork have central sewage treatment systems. These systems are expensive because of the low population density and the distances which sewage must be transported around the lake. Many individual septic systems exist around the lake.

Comment by Marc Spratt - The 208 Project developed facility plans around the lake and in the Flathead basin. Caryn is correct, the low population densities, distances, and difficult geology make the cost of transporting sewage via pipelines too high. After a long fight over where the treatment plant should be located, Lakeside and Somers were sewerred. The Big Fork treatment plant has reached its capacity. Elmo is in the process of developing a central sewage treatment system. Columbia Falls, Whitefish, and Kalispell have upgraded their sewage treatment plants. Meanwhile, the state has discovered the significance of storm water run off, and is forcing new projects to address storm water. Presently, no rules exist regarding nutrient loading from storm water. Another interesting development is Helena Valley sewage district's attempt to manage septic systems centrally.

Question - Does the Tribal area around the lake complicate the situation?

Answer by Marc Spratt - Lake County and the Confederated Salish and Kootenai Tribes are working together to address jurisdictional issues. Because they have no place to move, the Tribes recognize that they have a lot to lose. The Tribes are moving to address shallow ground water and septic.

Comment - The after-the-fact cost of sewage treatment plants is an important reason to get ahead of sprawl.

Comment - Flathead County is trying to get ahead of development. It may implement county-wide zoning. The recent denial of the 200 unit North Shore development proposal is bringing this issue to a head.

Hungry Horse Water Activities - Curt Martin provided the update. The US Bureau of Reclamation (BOR) has begun their modeling effort for the cost allocation study requested by the state using the following assumptions:

- The State of Montana is seeking a 100,000 acre-feet (100 KAF) contract for water stored in Hungry Horse reservoir.
- This volume of water is expected to meet the growth in the Flathead and Clark Fork drainages from 2010 to 2060.
- Water is assumed to be withdrawn in equal annual amounts of 2 KAF per year beginning in 2010 and ramping up to the full 100 KAF in 2060.
- The water withdrawals will be from ground water which will have a highly attenuated affect on stream flows. This can be assumed to be a year around affect that is equal in all months.
- 60% of the water withdrawals will be in the Clark Fork and 40% in the Flathead.
- Water releases from Hungry Horse will be in the months of November through February in equal amounts each month.

While these assumptions are very rough and rudimentary, they are a start, and they keep the approach to the cost reallocation analysis simple. Based on this progress, the BOR will likely ask the state certain basic questions soon about the marketing arrangement, such as who will be the marketing entity, and how that process will work. The state should begin to anticipate these questions and prepare answers that can be used in the Congressional Authorization and contracting process, should it decide to pursue this use of Hungry Horse water.

Question - How will the state decide about the marketing arrangement?

Answer - I assume that the state will lease the Hungry Horse water that it obtains via a contract with BOR to basin water users. I also assume that the state will do so in a manner that results in the least impact to Hungry Horse operations, satisfies Avista's water rights, and provides water needed to allow additional water right permitting.

Comment by Senator Jackson - When I carried the bill amending the state's authority to lease water obtained through contracts for water stored in federal reservoirs, I assumed that the state could subcontract the leasing function.

Question - Will BOR have to write an environmental impact statement (EIS) before it contracts with the state to provide Hungry Horse water?

Answer - An EIS probably will not be required for the cost allocation study. BOR will likely prepare an EIS before issuing a contract. It will attempt to charge the state for the cost of the EIS.

Question - Does BOR contract with individual water users for water stored in Canyon Ferry reservoir?

Answer - Yes. The individual water users also bear the cost of the environmental review.

Task Force Action - Members of the Task Force present agreed that Gerald Mueller should write to DNRC posing two questions. First, how will the state decide what role to play regarding marketing of Hungry Horse water? Second, what is needed to satisfy mitigation requirements in Clark Fork River basin water right permit applications?

Water Policy Interim Committee (WPIC) Bill Drafts - Holly Franz reviewed the status of the WPIC bill drafts as of the April 29-30, 2008 WPIC meeting. Copies of the bill drafts are available from WPIC's web site at http://leg.mt.gov/css/lepo/2007_2008/water_policy/default.asp.

- LC5001, "Accelerated Permitting Bill or Bucket-For-Bucket Bill" - The original bill draft would have exempted from the hydrogeologic assessment requirement an application proposing to mitigate ground water use "bucket for bucket". DNRC is attempting to address permitting issues through proposed amendments to HB 831 which was passed in the 2007 legislative session and through changes to its water right permit processes. DNRC's HB 831 amendments and a chart explaining its permit process changes are attached with this summary. The major changes in the HB 831 amendments are replacing the requirement for mitigating adverse affects with a requirement to mitigate net depletions and eliminating from statute much of the detailed requirements for hydrogeologic assessments. Many consultants developing ground water right permit applications are assuming that mitigating for net depletions would mitigate adverse effects. The key changes to the permit process would provide for a DNRC decision about whether a permit application complies with mandatory criteria before a public notice and hearing and replacing contested case hearings with show cause hearings. After it determines that an application is correct and complete, DNRC would review compliance of the application with the 85-2-311 MCA criteria. If in its judgment, the application would not comply, DNRC would so notify the applicant. The applicant could then request a show cause hearing before DNRC in which she or he would bear the burden of showing that DNRC erred in reaching this conclusion. Only the applicant would be a party in this hearing. If DNRC finds that the application would comply with the criteria, then it would notice the pending permit approval to the public. If no one objects to the approval, then DNRC would issue the permit. If objections are filed, then those objecting would be parties to a show cause hearing and would bear the burden of showing that the permit should not be issued. WPIC took no action on either the DNRC HB 831 amendments or on the process revisions. A group of interested parties, known as the Working Group, are voluntarily discussing these proposals in an attempt to reach consensus regarding them.

Comment - Consultants are in effect equating net depletions with adverse effects because they believe doing so is the simplest way to get through the process.

- LC5003, "Enforcement Bill" - WPIC heard a series of presentations about water right enforcement. The Attorney General is allocating three staff to work with county attorneys to bring court actions to enforce water rights. DNRC will provide technical information and expertise for the enforcement actions. No WPIC bill appears likely on this subject.

Question - Would the Attorney General's staff enforcement actions address clearly illegal water uses or in disputes between water right holders?

Answer - Apparently both.

- LC5007, "Ground Water Data Gathering Bill" - This bill has been changed so that the Montana Bureau of Mines and Geology (MBMG) would use its existing advisory committee rather than a new one to advise it on expenditure of the \$1.2 million provided in the bill. MBMG was asked how much it could do with this additional funding. John Metesh replied that it would allow MBMG to do more detailed ground water assessments in some of high growth areas. The WPIC members appear to be supportive this bill draft.

Comment - An important issue is, whose problem is it to collect information, the state or developers? The need for information is driven by growth. We need to focus on the information gathering process. How do we ask the right questions, and how do we get a decision from regulators?

- LC5009, “Aquifer Discharge Permit Bill” - This bill previously addressed use of sewage treatment effluent in aquifer recharge or mitigation plans. The bill has been changed to address activities that require a discharge permit.
- LC5012, “MDT Water Right Bill” - This bill replaced LC5005, which would have authorized public entities to pursue a water reservation in a closed basin to meet the federal Clean Water Act requirements. The new bill provides the Montana Department of Transportation (MDT) an exemption from permit requirements for use of ground water or water that does not flow from a perennial stream for wetland restoration in compliance with the federal Clean Water Act. The new draft apparently resulted from discussions between MDT and DNRC. Mike McLane, representing the Montana Department of Fish, Wildlife and Parks (DFWP), expressed concern about the bill’s definition of a perennial stream. He stated that a stream such as the Shields River which is occasionally dewatered by irrigation diversions would qualify for the permit exemption under the current definition. WPIC members have appeared to be supportive of MDT’s attempt to mitigate road building activities on wetlands as required by the Clean Water Act.

Comment - I am not supportive of giving MDT a permit exemption which gives it a free ride. MDT should have to acquire water rights like other developers.

- LC5014, “Community Water Systems Bill” - This bill came from the Working Group as a replacement for LC5004. It seeks to clarify the authority of local governments to require community water supply and sewage treatment systems. One question raised is how can local governments require these systems if the state cannot. Apparently, this bill will be considered further by the Working Group.

Question - Does this bill indicate that the authority clarification is gaining traction?

Answer - The bill recognizes that requiring community systems may be an issue for the growing areas of the state, but not the state as a whole. The devil is in the details.

Watershed Roundtable - Curt Martin reported that he looked into the existing contracts for convening a watershed roundtable for the Clark Fork River Basin. Existing contracts do not provide for such a convening. DNRC’s interest in roundtables stemmed from its experience in the eastern part of the state where conservation districts lead volunteer watershed. These groups have tended to focus on stream restoration work. The situation in the Clark Fork basin is different. Three of the key groups, the Task Force, the Upper Clark Fork River Basin Steering Committee, and the Flathead Basin Commission are authorized in statute and have specific mandates. Funds set aside for the roundtable were FY2006, one-time funds. These funds have already been carried over for two years. While not impossible, carrying the funding over to a third year does not seem like a good idea.

Comment - I think it would be worthwhile to provide an opportunity for all of the many watershed groups that operate in the Clark Fork to come together to discuss their common interests, what they are doing and what research they are pursuing.

Response by Gerald Mueller - Perhaps this could be the topic for the next policy conference.

Task Force Action - Members of the Task Force present agreed not to seek to carry over the FY2006 funds for a watershed roundtable.

Milltown Cultural Perspective Budget Request - Gerald Mueller reported that he had received a request from Dr. Susan Gilbrez for possible use of unexpended Task Force funds for this fiscal year. Dr. Gilbertz is Director of the Environmental Studies Program and an assistant professor of Geography at Montana State University-Billings. She is conducting research into the local

understandings of, and local responses to, the Milltown remediation and reclamation project. She requests about \$5,000 of Task Force funds to continue it.

Comment - People's responses to removal of Milltown Dam is not consistent with Task Force activities.

Task Force Action - Members of the Task Force present agreed that the research underway by Dr. Gilbertz is not consistent with the scope of Task Force activities so that Task Force funds should not be used to support this research.

Question by Marc Spratt - RLK Hydro will have an intern this summer who is an engineering geology student with a hydrogeology emphasis. Would the Task Force support use of its funds to allow this intern to gather information about the cost/value of water in the basin?

Task Force Action - Members of the Task Force present agreed that DNRC should use unspent FY 2008 Task Force funds to support an RLK Hydro intern to gather information on the following:

- *The price of water leases that have been negotiated in the Clark Fork River basin;*
- *The cost of providing water via private water systems in the basin;*
- *The value of water for generating hydroelectricity at basin dams;*
- *The sources of water for new large, platted subdivisions in the basin; and*
- *A comparison of the cost of community water systems with individual wells in the basin.*

The Task Force members present asked Marc Spratt to prepare a scope of work and budget by May 19 for this work and to send it to Curt Martin. They asked Curt Martin to explore the most efficient way to provide unused FY 2008 Task Force funds for this effort.

Water Right System Policy Paper

The Task Force reviewed the draft paper dated April 2008, which had been circulated previously to Task Force members. Task Force member comments were as follows:

- On page 6, last sentence, add the detail about water right processing time provided by John Tubbs to the April WPIC meeting.
- On page 7, move the last sentence of the first paragraph to the summary section.
- On page 8, in the first sentence under the heading "Groundwater and Surface Water Interactions," replace the words "factor that is changing" with "challenge to".
- On page 9, in the first sentence of the second completed paragraph, change "will undoubtedly" to "may".
- In this same paragraph, use a footnote to clarify the meaning of "adverse effects".
- On page 9, in the fourth sentence of the third paragraph, replace the words "apparently do not provide" with "may not specifically provide for".
- On page 10, in the first paragraph under the heading "Domestic Water Supply", change the second sentence to read "Some may argue that because water is a basic necessity, Montana water law should give domestic use priority."
- Provide citations for the next sentence, "All other states subject to the prior appropriation doctrine..."
- On page 10, change the fifth and sixth sentence under the heading "Domestic Water Supply" to read "One exception applies within a controlled ground water area. In such an area..."
- On page 12, in the fourth sentence, "DNRC evaluates this test...", consider making the example more general than just hydropower.
- On page 12, in the second sentence of the third paragraph, replace "will likely" with "may".
- On page 12, in the last sentence of this same paragraph, replace the "100%" with "for the most part non-consumptive" and move this sentence to the second paragraph.

- On page 13, in the third sentence of the paragraph continued from the previous page, delete “may” so that it reads “...these requirements affect the physical and/or legal...”
- In the last sentence of this same paragraph, replace “are likely to” with “may” and cite the 1952 McCarran Amendment.
- On page 13, add a sentence to the first completed paragraph to the effect that “DFWP is suggesting a draw down limit to benefit bull trout in Hungry Horse reservoir.”
- On page 13, change the first sentence under the heading “Summary” to read “Montana water law is governed by the doctrine of prior appropriation, first-in-time, first-in-use.”

Task Force members discussed the target audience for this paper and agreed that it should include WPIC, conservation districts, representatives of real estate agents, and basin water interest groups. The paper should be printed in a two column format and include an attractive cover. Plans should be made to print 300 copies of the paper, and it should be posted on the Task Force web site.

Technical and Policy Conferences

Because of time constraints, this topic was postponed until the next Task Force meeting in June.

Public Comment

There was no additional public comment.

Next Meeting

The next meeting is scheduled for 9:30 a.m. on Monday, June 2, 2008 in the Missoula DFWP meeting room. John Tubbs, DRNC’s Water Resources Division Administrator, will be invited to the meeting to discuss DNRC’s legislative proposals for the 2009 legislative session. Lunch will be provided.

Appendix 1

85-2-360. Ground water appropriation right in closed basins. (1) An application for a ground water appropriation right in a basin closed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344 or administratively closed pursuant to 85-2-319 or 85-2-321 must be accompanied by a hydrogeologic assessment of net depletion to surface water pursuant to 85-2-361; and must be accompanied by an aquifer recharge or mitigation plan as provided in 85-2-362, if the assessment predicts a net depletion to surface water.

(2) Ground water applications for uses non-consumptive to the source are exempt from the requirements in (1) above.

(3) If the applicant has used the water for the purpose of conducting testing, the applicant shall terminate the use of the water after testing is completed. Failure to terminate use of the water may result in a fine of not more than \$1,000 for each day of the violation.

(4) A determination of whether or not there is an adverse effect on a prior appropriator as the result of a new appropriation right is a determination that must be made by the department based on the amount, timing, and location, of net depletion.

(5) The priority date for an appropriation right that is granted to an entity whose permit application was returned after April 11, 2006, and before May 3, 2007, because of the department's interpretation of a court decision is the date of the initial application to the department.

85-2-361. Hydrogeologic assessment -- definition -- minimum requirements.

(1) (a) For the purposes of 85-2-360 through 85-2-362, "hydrogeologic assessment" means a report prepared by a hydrogeologist, a qualified scientist, or a qualified licensed professional engineer that describes the geology, hydrogeologic environment including hydraulic properties and boundaries, and predicted net depletion, if any, including the amount, timing, and location of net depletion to surface water within the potentially affected area. Further, the report must describe water quality with regard to the provisions of 75-5-410 and 85-2-364, and any water treatment method that will be used at the time of any type of injection or introduction of water to the aquifer to ensure compliance with 75-5-410 and 85-2-364 and the water quality laws under Title 75, chapter 5.

(b) In predicting net depletion of surface water from a proposed use, consideration must be given, at a minimum, to:

- (i) the actual amount of water diverted and consumed; and
- (ii) any return flows from the proposed use, including but not limited to any treated wastewater return flows if the treated wastewater that is considered effluent meets the requirements of 75-5-410 and 85-2-364.

(2) The final corrected hydrogeologic assessment, the model if used, the aquifer test data, and other related information must be submitted to the department. The department shall submit this information from a correct and complete application to the bureau of mines and geology. The bureau of mines and geology shall ensure that information submitted pursuant to this section is entered into the ground water information center database as part of the ground water assessment program. The department and bureau of mines and geology shall determine the required format of the information to allow entry into the groundwater database.

(3) An entity that has previously conducted some type of hydrogeologic assessment may submit the information from that assessment as the hydrogeologic assessment required by this section if the information meets the criteria and requirements of this section.

85-2-362. Aquifer recharge or mitigation plans in closed basins -- minimum requirements. (1) An aquifer recharge or mitigation plan must provide evidence of how the plan will offset the required amount of net depletion to surface water from an appropriation of water, including at a minimum;

- (a) the amount of water reallocated through exchange or substitution;
- (b) timing and location, generally, of water reallocated through exchange or substitution;
- (c) how the mitigation water in the plan will be put to beneficial use;
- (e) how the water in the plan will be measured; and
- (f) evidence that an application for a change in appropriation right, if necessary, has been submitted.

(2) In addition to the requirements listed in (1), an aquifer recharge plan must also include:

- (a) a description of the process by which water will be reintroduced to the aquifer;
- (b) evidence that the appropriate water quality related permits have been granted pursuant to Title 75, chapter 5, and pursuant to 75-5-410 and 85-2-364;

(3) Mitigation water does not include the salvage of tributary waters by the eradication of phreatophytes, nor does it include the use of tributary water collected from land surfaces that have been made impermeable, thereby increasing the runoff but not adding to the existing supply of tributary water.

(4) The department may not require an applicant, through a mitigation plan or an aquifer recharge plan, to provide more water than the quantity needed to offset net depletion.

(5) An appropriation right that relies on a mitigation plan or aquifer recharge plan to offset net depletion of surface water must be issued as a conditional permit that requires that the mitigation plan or aquifer recharge plan must be exercised when the appropriation right is exercised.

85-2-364. Department permit coordination -- requirements for aquifer recharge plans. To ensure that the department and the department of environmental quality are coordinating their respective permitting activities:

- (1) an applicant for a new appropriation right pursuant to 85-2-360 that involves aquifer recharge and requires a discharge permit, shall provide evidence that an application for the discharge permit has been submitted to the appropriate agency; and
- (2) the department may not grant a new appropriation right pursuant to 85-2-360 that involves aquifer recharge until the discharge permit, if necessary, has been obtained and presented to the department.

85-2-369. Aquifer testing, test well, or monitoring well data submission -- not beneficial use.

(1) All aquifer testing data and other related information from test wells, monitoring wells, or other sources that is collected for the purpose of obtaining a new appropriation right or a change in appropriation right must be submitted to the department and the bureau of mines and geology in a form prescribed by the department and the bureau of mines and geology. The bureau of mines and geology shall ensure that information submitted pursuant to this section is entered into the ground water information center database as part of the ground water assessment program.

(2) (a) Water testing or monitoring is not a beneficial use of water requiring the filing of a permit application.

(b) A permit is not required if the intent of a person is to conduct aquifer tests, water quality tests, water level monitoring, or other testing or monitoring of a water source.

(c) Upon completion of the activities described in (2)(b), the applicant shall terminate use of the water.

MEMORANDUM

TO: JIM ELLIOTT, CHAIR
WATER POLICY INTERIM COMMITTEE

FROM: JOHN TUBBS, ADMINISTRATOR
WATER RESOURCES DIVISION, DNRC

SUBJECT: HB 831 PROPOSED AMENDMENTS SUMMARY

DATE: 6/19/2008

CC: JOE KOLMAN

As requested by the Chairman, the Department has prepared a point by point analysis of the changes to statute proposed in the draft handed out to the Committee on March 6, 2008. In the future we will try to have a similar document prepared prior to submission of any draft proposal.

The Department has been working with MCA 85-2-360 through 85-2-369 for a year and believes that the very detailed text of the statutes limits the discretion of the Department to a point that permit applicant's costs and risks are unnecessarily high. The Department may also see increased costs associated with litigation over the detail in the statute. In proposing the changes to these statutes, the Department's intent is to try and keep the goals of HB 831 to protect senior water right holders and provide a process to get a ground water permit in a closed basin but reduce the detail. By reducing the detail, we believe the Department can be more flexible when faced with the facts of each proposed development we can reduce the possibility of technicalities being the basis for denial of permits which will, in turn, reduce the risk of litigation to the applicant and to the Department, and we can make the application process under these provisions more attractive to the development community. What we do know is we are seeing very few HB 831 applications and we are told that the reason is cost, risk and the ease of using exempt wells as a source of drinking water for subdivisions.

The following narrative tries to give the Committee some perspective as to the purposes and reasons we are proposing the changes to statute. Again I would ask the Committee to take these amendments in the same context as the draft reports prepared by Legislative staff. This is not an official agency legislative proposal; rather it is intended to focus the debate on the permitting process in closed basins.

- **Changes to 85-2-360:**

1. Page 1, Line 5: 85-2-321 is added to include the Milk River closure.
2. Page 1, Lines 5-10: These changes would require mitigation in order to consumptively use groundwater in a closed basin. The Department is considering these changes because of two facts: Consumptive use of groundwater will result in net depletion of surface water over time, and basins were closed to new surface water uses because the Legislature or the Department determined that surface water has been fully appropriated in the basin. Based on these reasons, the proposed changes eliminate the statutory questions of whether consumptive use of ground water will cause net depletion (it will) and whether net depletion will cause adverse affect (in a closed basin there is no legally available surface water). By eliminating these

questions, applicants will know they have to offset consumptive use through mitigation which will make the process more certain and eliminate objections and legal actions to determine if there is net depletion and/or adverse affect.

3. Page 1, Lines 11, 12: This change excludes the non-consumptive use of ground water from the requirements of mitigation. The Department is seeing an increase in applications for use of ground water through “heat pumps” for climate control in buildings. This is a non-consumptive use of ground water and should not require mitigation.
4. Page 1, Lines 13-22: Same as lines 5-10 above.
5. Page 1, Lines 23-26: Clarify that if you develop a well for the purpose of conducting hydrogeologic tests, the use of the well must cease until a water right is obtained.
6. Page 1, Lines 27-34: Same as in lines 5-10 above.
7. Page 1, Lines 37-39: Simplify the language of the statute.
- **Changes to 85-2-361:**
 8. Page 1, Lines 48, 49: This change brings the requirement to have a qualified professional from (ii) below in order to simplify the wording of the section.
 9. Page 1, Lines 49-55: These changes list the topics that our professional hydro-geologists need in a hydrogeologic assessment associated with a ground water development to evaluate the application. This begins to simplify and clarify the detail of section 361.
 10. Page 1, Lines 55-58; Line 1 on Page 2: These changes pull together criteria to evaluate water quality in the hydrogeologic assessment.
 11. Page 2, Lines 1-5: These changes eliminate a long list of different surface water bodies. Note that on Page 1, Line 54 there is a reference to surface water. Surface water is already defined in statute and rule to include this list so these changes are intended to simplify the language of the section while retaining its purpose.
 12. Page 2, Lines 8-12: These changes are intended to clarify and simplify what an applicant needs to show in predicting net depletions: the diverted amount, the consumed amount and the amount returned. Again the purpose of the original language is maintained but the language is simplified.
 13. Page 2, Lines 16-20: This requirement is moved to Page 1, Lines 48 and 49.
 14. Page 2, Lines 21-24: This sub-section has been very difficult for the Department to administer as it may lead an applicant to submit an application that we can not process under 85-2-311 MCA criteria. (In other words, if the effects cross the boundaries described in the existing sub-section the applicant may ignore these effects based upon this provision. However, the Department could not ignore the impacts beyond the boundary identified in the sub-section under 85-2-311. MCA, if it had the potential to adversely affect a water right holder outside of the boundary.) Rather than dictating an artificial surface area boundary in statute, the Department believes that the “qualified professional” should be allowed to define the extent

of the influence of ground water development for the basis the hydrogeologic assessment. This eliminates potential conflict between the Department, the applicant, and the objectors.

15. Page 2, Lines 25-56: These changes eliminate the specific list of requirements for aquifer properties and aquifer boundaries. The Department believes the “qualified professional” would have sufficient legislative guidance provided on Page 1, Lines 51 through Page 2 Line 1, to develop a hydrogeologic assessment. These changes would simplify the statute and eliminate the potential for law suits over technical oversights in an application while maintaining the purpose of the provisions.
16. Page 2, Lines 57, 58; Page 3 Lines 1-8: These changes clarify the data requirements prior to submission to the Bureau of Mines and Geology for inclusion in the ground water data base. The Department receives applications where the initial hydrogeologic assessment is in error. Through the deficiency letter process, as well as consultation with the applicant’s “qualified professional” these errors are corrected. These changes clarify that it is the corrected hydrogeologic assessment as deemed by the Department that is sent to the Bureau.

- **Changes to 85-2-362:**

17. Page 3, Lines 15-21: These changes simplify statute by requiring mitigation of net depletions not mitigation of net depletions that cause adverse affect. Again, this statute only impacts closed basins and in closed basins the Legislature or the Department has determined that the surface water is fully appropriated.
18. Page 3, Lines 23-58; Page 4 Lines 1-4: These changes clarify and simplify what is required in a mitigation plan by eliminating the duplicate requirements for mitigation plans and aquifer recharge plans. Yet the changes keep the unique water quality requirements needed for aquifer recharge plans in a separate sub-section.
19. Page 4, Lines 5-8: These changes are intended to identify proposals and actions that can not be considered a “mitigation” plan. These mirror a Colorado statute excluding the elimination of vegetation to reduce consumptive use and the paving or covering of land with hard surfaces again eliminating consumptive use as components of a mitigation plan.
20. Page 4, Line 11 and Lines 13, 14: This change again eliminates the question of adverse affect and focuses mitigation on net depletion.

- **Changes to 85-2-634:**

21. Page 4, Lines 23 – 26: These changes coordinate the acceptance of the water right permit application with required discharge permits issued by the Department of Environmental Quality. However, rather than requiring the applicant to have already obtained the discharge permit from DEQ before applying to DNRC for a water right (a sequential process that delays the submission of the water right permit application and increases the overall time frame for the developer) the changes provide for a coordinated but parallel process that should protect water quality and reduce overall time frames. It is important to note that in (2) Lines 27-29 the Department cannot issue the permit until the DEQ discharge permit is issued.

- **Changes to 85-2-639:**

22. Page 4 Lines 47, 48: Reiterates that once aquifer testing is completed any use of the water shall cease.

DNRC Modified Application Process

